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January 23, 2023

VIA ECF

The Hon. Paul A. Crotty
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *Baerga et al. v. City of New York et al.*, No. 21-cv-5762-PAC (S.D.N.Y.)

Dear Judge Crotty:

We represent Plaintiffs in the above-referenced putative class action. Pursuant to Your Honor's Individual Practices Rules #1A and #3C, we write to submit a proposed Civil Case Management Plan and Scheduling Order.

By way of background, after the Court instructed the parties to proceed with discovery at the September 27, 2022 conference, Plaintiffs conferred in good faith with Defendants pursuant to Your Honor's Individual Practices Rule #3C on October 18, 2022 and December 23, 2022 in order to reach agreement on a proposed discovery schedule. The parties have unfortunately been unable to come to an agreement. Plaintiffs therefore respectfully request that the Court so-order the enclosed schedule. In preparing this schedule, Plaintiffs were mindful of the demands placed on the parties by the pending motions for a preliminary injunction and expedited discovery. This schedule provides sufficient time for briefing on those motions to be completed before any discovery deadlines.

The day after the September 27 conference, Plaintiffs sent Defendants a proposed scheduling order. After Defendants sent a counterproposal limiting discovery to only the individual Plaintiffs, Plaintiffs sent a revised proposal on December 1, which included a draft of Plaintiffs'

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discovery requests. Defendants refused to agree to any set deadlines, claiming that no ordinary-course discovery can proceed while Plaintiffs' motions for a preliminary injunction and expedited discovery were pending.

On December 23, 2022, the parties met and conferred again, and Defendants again indicated an unwillingness to agree to a discovery schedule with fixed dates. On January 19, 2023, Plaintiffs once again contacted Defendants on this issue and were unable to come to an agreement. As such, Plaintiffs provided Defendants with notice of our intent to file a letter with the Court.

As Your Honor noted at the September 27, 2022 conference, the filing of a motion to dismiss "carries with it an implied obligation that . . . the Rule 26 discovery called for by the statute [will occur]." Moreover, this delay on the discovery schedule is especially prejudicial to Plaintiffs as class certification has not yet occurred and cannot without discovery. *See Pandit v. Saxon Mortg. Servs., Inc.*, No. 11-cv-3935, 2013 WL 12364120, at *4 (E.D.N.Y. June 5, 2013) (because Rule 23(c)(1)(A) requires that class "certification must take place at 'an early practicable time,' discovery on the prerequisites of Rule 23 must be permitted very early in the litigation.")

Plaintiffs appreciate the Court's continued attention to this pressing matter.

Respectfully Submitted,

/s/ Dennis Kitt
Dennis Kitt

cc: All Counsel of Record (via ECF)

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Dated: _____